

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

V.

C.A. No. 20-1744-CFC

WALMART INC. AND WAL-MART

STORES EAST, LP,

Defendants.

DEFENDANTS' MOTION TO DISMISS IN PART

On January 18, 2024, the Court held oral argument on Defendants’ Motion to Dismiss the Amended Complaint. D.I. 108. During that hearing, the Government proposed filing a Second Amended Complaint “for purposes of splitting up the claims [in prior Count I].” *Id.* at 126. The Court agreed to this proposal. *Id.* at 157.

With the Second Amended Complaint now filed, Defendants Walmart Inc. and Wal-Mart Stores East, LP (“Walmart”), by and through undersigned counsel, hereby move to dismiss Counts II, III, and IV of the Second Amended Complaint (D.I. 109) with prejudice pursuant to Fed. R. Civ. P. 12(b)(6) (the “Motion”).¹

¹ Walmart continues to maintain that paragraphs 482, 489, 508, 513, and 521-522 of the Second Amended Complaint fail to state additional claims beyond those otherwise asserted in Count I, because those paragraphs do not present sufficiently particularized allegations about identifiable sets of prescriptions. *See* D.I. 84 at 16-18; D.I. 94 at 8-9. In light of the Court's concerns stated at the hearing about the propriety of dismissing parts of a single count, however, Walmart will address the legal deficiency of those paragraphs, as needed, in discovery or summary judgment.

Per the Court's instruction, the Motion contains no new briefing (D.I. 108 at 131), as the grounds for this Motion are set forth in the Opening Brief (D.I. 84) and Reply Brief (D.I. 94) filed in connection with the Amended Complaint.

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